

# EXHIBIT A

Expert Declaration of  
Professor Kelly Lytle Hernandez

Declaration of Professor Kelly Lytle Hernandez  
on the History of USC 1325/1326

I have been asked to make this declaration to explain my understanding of the history of USC 1325 and USC 1326. I am a professor of History, African American Studies, and Urban Planning at UCLA where I hold The Thomas E. Lifka Endowed Chair in History. In 2019, I was named a MacArthur “Genius” Fellow for my historical and contemporary work. One of the nation’s leading experts on race, immigration, and mass incarceration, I am the author of, *Migra! A History of the U.S. Border Patrol* (University of California Press, 2010), and *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles* (University of North Carolina Press, 2017). Both books, *Migra!* and *City of Inmates*, address the history of criminalizing undocumented immigration to the United States.

In 1929, the U.S. Congress first criminalized the act of entering the United States without authorization, making entering the United States without authorization a misdemeanor and re-entering the United States without authorization after deportation a felony. Although no racial group was named in the 1929 legislation, racial animus motivated the bill’s author. Moreover, the politics of white supremacy dominated the politics of immigration control at the time. On these grounds, the individual racial animus of the original bill’s author and the prevailing politics of immigration legislation leading into and during the 1920s, the criminalization of unauthorized entry was a racially motivated act. Unsurprisingly, the new law delivered racially disparate outcomes.

The modern system of federal immigration control began during the 1870s. Before that, states and cities largely set immigration policy. But the Panic of 1873 triggered a deep economic recession across the United States that exacerbated what scholars call “anti-Chinese sentiment” in the U.S. West, leading to the 1882 Chinese Exclusion Act, which prohibited Chinese laborers from entering the United States for ten years. The act was a more restricted measure than demanded by hardline westerners, but as one of the new law’s staunchest advocates explained, “If this law is strictly enforced it will not be many years before the [Chinese] race will, in all probability, be extinct in this country.” Ten years later, Congress passed the Geary Act, which extended the ban on Chinese laborers and required all lawful Chinese immigrants to register with federal authorities. Those who failed to do so would be subject to arrest, imprisonment and then deportation. The 1892 Geary Act marked a sweeping expansion of U.S. immigration control. Prior to the Geary Act, Congress had adopted legislation to prohibit certain groups of persons from entering the United States. By 1891, Chinese laborers and all prostitutes, convicts, “lunatics,” “idiots,” contract laborers, and those “liable to become public charges” were categorically prohibited from entering the United States. All such persons were to be stopped at immigration stations, interrogated, and denied entry into the country. But after the Geary Act, immigrants who had already established residence within the United States were subject to forced removal. Therefore, the broadened the basic framework of U.S. immigration control beyond the nation’s borders to include deportation from within the United States.

Since 1892, U.S. authorities have deported or otherwise forcibly removed more than fifty million people from the United States. In the early years of deportation, many of the nation’s deportees were Chinese immigrants. The Chinese Mounted Guard, which was established to police unlawful Chinese immigration in border regions, apprehended and deported thousands. But, by 1924, the focus of exclusion at U.S. borders and removal from within U.S. borders changed, turning toward the rising number of Mexican immigrants entering the United States.

Few Mexicans immigrated to the United States at the close of the nineteenth century. But a period of land privatization in Mexico paired with agricultural development in the southwestern United States soon triggered an unprecedented wave of mass labor migration between Mexico and the United States. By the early 1900s, tens of thousands of Mexicans entered the United States every year. Most arrived in search of work and engaged in seasonal migrations between work in the United States and home in Mexico. By the 1920s, Mexicans made more than 1 million border crossings every year and emerged as the majority low-wage workforce in many southwestern industries. As the president of the Los Angeles Chamber of Commerce explained, “We are totally dependent . . . upon Mexico for agricultural and industrial common or casual labor. It is our only source of supply.”

But Mexican immigrants were more than common and casual laborers. Living and working in the United States, Mexicans formed communities and associations, built homes, raised families, joined labor unions, and established everything from newspapers and businesses to bands and baseball teams. Building what has been described as MexAmerica and raising the first generation of Mexican Americans, Mexican immigrants made full and permanent lives for themselves and their children—an increasing number of whom were U.S.-born citizens—in the United States.

The rise of MexAmerica made Mexican immigration a hot topic in the U.S. Congress during the 1920s. In a decade now remembered as the “Tribal Twenties”—a time when the Ku Klux Klan was reborn, Jim Crow came of age, and public intellectuals preached the science of eugenics—many representatives, especially those popularly known as “Nativists,” hoped to restrict and even end immigration to the United States from every region of the world other than western Europe.<sup>3</sup> In the past, they argued, slaveholders had made a terrible mistake by importing Africans to the country in the blind pursuit of profit. Nothing could be done to undo the tragedy of slavery—the introduction of Africans to the country, that is—but, they hoped, new immigration laws would limit the future peopling of the United States.

For them, the 1882 Chinese Exclusion Act had been just the beginning of an enduring effort to restrict immigration to the United States. In the years that followed the 1882 law, Congress further restricted who could legally enter the United States. By 1917, Congress had banned all Asian immigration to the United States and also categorically prohibited all prostitutes, convicts, anarchists, epileptics, “lunatics,” “idiots,” contract laborers, and those “liable to become public charges” from entering the United States. Moreover, Congress adopted a fee structure and literacy test designed to keep the poor and illiterate from entering the country. Many Nativists still wanted more. In particular, they demanded a comprehensive whites-only immigration system.

In 1924, the Nativists scored a major legislative victory with the passage of the National Origins Act. The law affirmed all previous immigration restrictions, such as the total bans on contract laborers, epileptics, anarchists, polygamists, criminals, and all Asian immigrants. The 1924 law also required all immigrants to submit to inspection at a U.S. immigration station, where they would have to pass a literacy test and a health exam and pay \$18 in head taxes and visa fees before legally entering the country. Only western Europeans, they believed, would be able to pass such exams and pay the fees required for legal entry into the United States. Finally, the 1924 National Origins Act also established a system of national quotas that limited the total number of immigrants allowed to enter the country each year. The quota system constituted what historian John Higham has described as a “Nordic victory” by narrowing the pathways of legal immigration to allow only a particular portion of the world’s population to enter: 96 percent of all quota slots were reserved for European immigrants.

However, to pass the National Origins Act, the Nativists in Congress made a painful compromise. Employers across the southwestern United States vehemently opposed the quota system. At a time when U.S. immigration authorities counted 100,000 Mexicans crossing the border each year, the quota system would limit Mexican immigration to a few hundred border crossers annually. The quota system threatened to cut the surge of Mexican immigration to a trickle. But industries in the West had become “dependent” on Mexican labor, explained employers, who voiced their opposition to the new law. Under pressure from these employers, a bloc of congressmen from western states refused to vote for a comprehensive quota system, forcing the Nativists in Congress to choose between accepting a Mexican quota exemption or passing no immigration law at all. The westerners won. Therefore, the 1924 National Origins Act exempted all immigrants from the Western Hemisphere, including Mexican immigrants, from the quota system. So long as Mexican immigrants complied with the administrative requirements for legal entry—submitted to inspection at an official port of entry, passed the literacy test and health exam, and paid the \$18 head tax—an unlimited number of them could enter the United States each year.

Nativists chafed at the Western Hemisphere exemption. As one congressman complained during the 1924 hearings, “what is the use of closing the front door to keep out undesirables from Europe when you permit Mexicans to come in here by the back door by the thousands and thousands?” After the passage of the 1924 National Origins Act, the nativists campaigned to add Mexico’s migrant workers to the quota system. Mexico was a nation of mongrels, they argued. As such, Mexicans were unassimilable racial inferiors and unrestricted Mexican immigration jeopardized the core objective of the National Origins Act. “The continuance of a desirable character of citizenship is the fundamental purpose of our immigration laws. Incidental to this are the avoidance of social and racial problems, the upholding of American standards of wages and living, and the maintenance of order. All of these purposes will be violated by increasing the Mexican population of the country,” explained Congressman John C. Box (Texas) who co-sponsored a 1926 bill to limit Mexican immigration to the United States. The growers defeated the 1926 Box Bill but the nativists tried again in 1928 arguing that the exemption for Mexican workers needed to be terminated because, as they forebodingly warned, “Our great Southwest is rapidly creating for itself a new racial problem, as our old South did when it imported slave labor from Africa.”

Throughout their debates with the nativists, southwestern growers fully agreed with the notion that Mexico’s immigrant workers presented a “racial problem” and thereby conceded the nativists’ point that Mexican immigration posed a threat to American society. As S. Parker Frisselle of the California Farm Bureau Federation explained during the 1926 hearings, “with the Mexican comes a social problem...It is a serious one. It comes into our schools, it comes into our cities, and it comes into our whole civilization in California.” But after assuring the nativists that “We, gentlemen, are just as anxious as you are not to build the civilization of California or any other western district upon a Mexican foundation,” the growers countered the nativists’ call to place a numerical limit upon Mexican immigration to the United States by arguing that without unrestricted access to Mexican workers, the rising empire of agribusinesses in the American southwest would turn to ruin. Instead of ending Mexican immigration, they offered the nativists a promise. “We, in California,” vowed Friselle, “think we can handle that social problem.” For, as another agribusinessman from Texas testified, “if we could not control the Mexicans and they would take this country it would be better to keep them out, but we can and do control them.”

The pledge that “we can and do control them” referred to the social world of agribusiness in the U.S.-Mexico borderlands. Agribusinessmen and the demands of their enterprises dominated the political, social, and cultural life of borderland communities as the racialized organization of work refracted throughout community life. Whites held land or managed workers

while Mexicanos harvested, plowed, picked, tended, reaped, and migrated. As Devra Weber, Paul Schuster Taylor, and others have detailed, the racialized divisions in California were so crude that “the owners and top managers were white: foremen, contractors and workers were Mexican.” In Texas, one young white farmer explained that white landholders and tenants lived a life of leisure because “we have the Mexicans here and don’t work.” The hierarchy between Anglo-American landowners, white managers, and Mexicano workers reverberated throughout the region where highly racialized practices of social segregation, political repression, and community violence accompanied the patterns of economic exploitation that locked the region’s large Mexicano population in low-wage work. From Texas to California, white and Mexicano children attended separate and unequal schools. Poll taxes and political bosses effectively disenfranchised Mexicano voters. Mexicans had limited employment options outside of agriculture. Police violence against Mexicanos was common. And, where it was most extensive, “No Negroes, Mexicans, or Dogs” signs were posted on restaurant doors.

While the quota system reduced immigration from most corners of the world Mexican immigration soared. In fact, by the end of the 1920s Mexico became one of the leading sources of immigration to the United States. This unnerved the Nativists. Mexicans, they hollered, were “peons,” “mongrels,” and “racially unfit for [U.S.] citizenship.” Mexican immigration, they believed, threatened to degrade the nation’s “Aryan” stock. It needed to be stopped. But according to the 1924 Immigration Act, an unlimited number of Mexicans would be allowed to enter the United States every year. All Mexicans had to do was travel to an official port of entry anywhere along the U.S.–Mexico border, submit to inspection, pass the literacy test and health exam, and pay—or have paid by their employers—the \$18 entrance fee. Mexicans did this one million times during the 1920s. On top of this, many Mexicans crossed the border without officially registering for legal entry. They evaded the expense and inconvenience of legal entry and, instead, simply crossed the border along its many desolate stretches between ports of entry. The U.S. Immigration Service estimated that Mexicans made an estimated half-million unauthorized border crossings during the 1920s. With western industries continuing to expand, every indicator suggested that Mexican immigration, both authorized and unauthorized, would only increase in the years ahead. The continued threat of Mexico’s “mongrels” migrating into the United States undermined the Nativists’ Nordic victory of 1924.

But the Nativists in Congress never gave up their quest to end Mexican immigration to the United States. After the passage of the 1924 Immigration Act, they proposed bill after bill attempting to add Mexico to the quota system. Between 1926 and 1930, Congress repeatedly debated the future of Mexican immigration into the United States. Each time, employers—namely those in the business of industrial agriculture in the U.S. West—protested. S. Parker Frisselle was the first person to testify before Congress when the Mexican quota hearings began in January 1926. An influential farmer and lobbyist from California, Frisselle was a leading voice among the dozens of agribusiness owners who journeyed to Congress to support unrestricted Mexican immigration to the United States. Immigration control, Frisselle conceded, was one of Congress’s most sacred duties. Immigrants, he explained, were permanent residents who, in time, became U.S. citizens. Congress, therefore, rightly passed laws to restrict, limit, and filter immigration to the United States. Thus Frisselle supported the Nativists’ pursuit of immigration restriction. “We, gentlemen,” he testified, “are just as anxious as you are not to build the civilization of California or any other western district upon a Mexican foundation.”

However, argued Frisselle, Mexicans were not immigrants. “There is . . . in the minds of many the thought that the Mexican is an immigrant,” explained Frisselle. That thought was wrong, he assured. “The Mexican,” he testified, “does not remain.” “He always goes back,” promised Frisselle. “The Mexican,” continued Frisselle, “is a ‘homer.’ Like the pigeon he goes home to roost.” On this promise that Mexicans were “bird[s] of passage” who would, at the end of each season, return to Mexico, never settling north of the border and never becoming Mexican

American, the western lobby defeated the 1926 bill to cap Mexican immigration to the United States.

Two years later, as Congress continued to debate Mexican immigration, George C. Clements, a lobbyist from Los Angeles, emerged as a leader among the western agribusinessmen. As the director of the Agricultural Bureau of the Los Angeles Chamber of Commerce, Clements's full-time occupation was the protection and advancement of the interests of agribusiness. An evangelist for unrestricted Mexican immigration, he traveled around Los Angeles and throughout the southwest lecturing on the topic. He also provided research to congressional committees, consulted with California's governors, organized industry wide meetings, and vigorously confronted all challenges to the organization of agriculture in the West. When liberal academics challenged the inequities of agribusiness, Clements picked apart their claims in counterstudies and editorials. Indefatigable, Clements was a driving force behind the western lobby for unrestricted Mexican immigration.

According to Clements, just one fact mattered in the Mexican immigration debate. The fact, as Clements put it, was that Mexican immigrants were "swallows": like migrating birds, they would never permanently settle within the United States. Mexicans, he explained, "have no intention of becoming citizens within the United States." A Mexican would not settle in the United States because "his homing instincts take him back to Mexico." But if the homing instinct of Mexico's swallows were ever to falter, "we need not be burdened with his keep." Estimating that 80 percent of California's Mexican working population had entered the country without authorization, Clements assured worried Nativists that Mexicans could be forcibly removed from the country. "He is deportable," Clements wrote, lectured, and testified. Mexican deportability, argued Clements, was a social fact that Congress could depend on when voting to leave Mexican immigration unrestricted.

Clements also asked the opponents of unrestricted Mexican immigration to carefully consider one question before voting against it. That question, according to Clements, had nothing to do with Mexicans. It had to do with blacks. "The one problem which should give us pause is the negro problem," explained Clements. "I warn you. American business has no conscience. If the Mexican is denied us, the [Puerto Rican] negro will come," he cautioned. Knowing his adversary well, Clements baited the nervous Nativists of the Tribal Twenties. "Which do you choose," he asked, Mexico's deportable birds of passage or Puerto Rican Negroes who, as citizens, would leave the edge of U.S. empire to settle within the final frontier of Anglo-America? "When once here always here," warned Clements; the Puerto Rican Negro would pose "a continual social problem and a growing menace. You can not deport him." The only real question, therefore, was whether Congress would open the Anglo-American West to permanent black settlement or make its peace with Mexico's birds of passage. Itinerant, impermanent, and disposable Mexican labor migration, he offered, was the only real solution for the development of the American West.

But by 1929, the western promises of Mexican impermanence had worn thin. Mexican immigration was soaring. Ten percent of the Mexican population already lived north of the border. How many more Mexicans would cross the border to settle in the United States? Nativists in Congress pounded the western employers for answers, charging them with recklessly courting the nation's racial doom with unrestricted migration from Mexico. Western employers refused to budge. At this moment, amid the escalating conflict between Anglo-American employers in the West and anxious Nativists in Congress, a senator from Dixie proposed a compromise.

A proud and unreconstructed white supremacist, Coleman Livingston Blease hailed from the hills of South Carolina. When Blease was elected to the state assembly in 1889, his first legislative proposal was a bill to racially segregate all railroad cars in South Carolina. The bill failed, but in the years ahead, Blease successfully rode a rising wave of rabid antiblack racism to the South Carolina governorship and then, in 1925, to the U.S. Senate. The self-appointed “political heir” to “Pitchfork” Ben Tillman, Senator Blease was, according to one biographer, touched by a strain of “Negro-phobia that knew no bounds.”

When Blease marched into Congress in 1925, he was prepared to battle any perceived threat to white supremacy. He was against the idea of a world court because he opposed any “court where we [Anglo-Americans] are to sit side by side with a full blooded ‘nigger.’” In this case, Blease referred to the possibility of a Haitian judge being appointed to the world court. In terms of immigration control, Blease campaigned on 100 percent Americanism, and once in Congress, he feverishly opposed any attempt to roll back immigration restriction and pushed Congress to prohibit the U.S. government from hiring noncitizens. The bill was rejected three times. He also proposed limiting the voting rights of naturalized citizens. This, too, Congress rejected. But in early 1929, as Congress was locked in an unending debate over the rise of Mexican immigration to the United States, it was Senator Coleman Livingston Blease from South Carolina who negotiated a settlement between the congressional Nativists and western agribusinessmen during the Tribal Twenties.

Blease shifted the conversation to controlling unauthorized Mexican migration rather than capping authorized migration. Citing the large number of unauthorized border crossings made by Mexicans each year, Senator Blease proposed criminalizing unlawful entry into the United States. Mexicans regularly crossed the border without authorization, making them particularly vulnerable to prosecution and incarceration according to Blease’s bill. According to Senator Blease’s proposal, “unlawfully entering the country” would be a misdemeanor punishable by a \$1,000 fine and/or up to one year in prison, while unlawfully returning to the United States after deportation would be a felony punishable by a \$1,000 fine and/or up to two years in prison. As written, the new law would affect any immigrant who unlawfully entered the United States, but it was introduced into Congress as a measure to control and punish unlawful Mexican immigrants, in particular. To this, the western agribusinessmen registered no protest. Mexican deportability, after all, was an asset to agribusinessmen in search of a temporary labor force. As Frisselle put it in 1926, “We, in California, would greatly prefer some set up in which our peak labor demands might be met and upon the completion of our harvest these laborers returned to their country.” Like deportation, the criminalization of unauthorized entry only strengthened the position of agribusiness owners. On March 4, 1929, Congress passed Blease’s bill. Within one year, Blease’s law was delivering results.

With stunning precision, the criminalization of unlawful entry caged thousands of Mexico’s proverbial birds of passage. Within one year of enforcement, U.S. attorneys prosecuted 7,001 cases of unlawful entry. By 1939, they had prosecuted more than 44,000 cases. In no year did the U.S. attorneys’ conviction rate fall below 93 percent of all immigration cases. Taking custody of individuals convicted on federal immigration charges, the U.S. Bureau of Prisons reported that Mexicans never comprised less than 84.6 percent of all imprisoned immigrants. Some years, Mexicans comprised 99 percent of immigration offenders. Therefore, by the end of the 1930s, tens of thousands of Mexicans had been arrested, charged, prosecuted, and imprisoned for unlawfully entering the United States. With 71 percent of all Mexican federal prisoners charged with immigration crimes, no other federal legislation—not prohibition, not drug laws, and neither laws against prostitution nor the Mann act—sent more Mexicans to federal prison during those years. Clearly, the archival record marks the criminalization of unauthorized entry as a racially motivated act that quickly delivered racially disparate outcomes.

DATED: August 2, 2020

Kelly Lytle Hernandez

# EXHIBIT B

Expert Declaration of  
Professor Benjamin Gonzalez O'Brien

# Declaration of Professor Benjamin Gonzalez O'Brien Regarding Racial Animus and Disparate Impact of 8 USC § 1326

I have been asked to make a declaration regarding the racial animus present in the initial codification of USC 1326 in 1929, as well as its subsequent reenactment in 1952. I am an associate professor of Political Science at San Diego State University and have written two books on U.S. immigration policy, *Handcuffs and Chain Link: Criminalizing the Undocumented in America* (University of Virginia Press) and *Sanctuary Cities: The Politics of Refuge* (Oxford University Press). Both of my books, as well as a number of my peer-reviewed journal articles address immigration in the United States, with a specific focus on undocumented entry. My first book, *Handcuffs and Chain Link* examined the importance of the 1929 *Undesirable Aliens Act* for the treatment of undocumented entry and how this act both reflected existing eugenicist beliefs regarding immigration from Mexico and Central America, but also shaped how undocumented immigrants were perceived in the decades

to come. I have testified previously and been qualified as an expert witness on these subjects in other challenges to USC 1326. Those cases include *U.S. vs. Machic Xiap*, *U.S. vs. Carrillo Lopez*, and *U.S. vs. Benitez Pineda*

USC 1326 was first codified in 1929 under S.B. 5094, a bill dubbed the *Undesirable Aliens Act*. This legislation, signed into law on March 4th, 1929, for the first time attached criminal penalties to the initial act of illegal entry (USC 1325) and reentry (USC 1326). Illegal entry was from this point forward a misdemeanor, punishable by imprisonment for up to one year, a \$1000 fine, or both. Reentry after deportation, which would be reenacted as USC 1326 in 1952, was henceforth a felony, punishable by a up to a two-year sentence, a \$1000 fine or both.

The Undesirable Aliens Act was the culmination of a long push for restrictions on immigration from Mexico that had began in the 1920s as the number of Mexican immigrants to the United States grew. Immigration from south of the Rio Grande river would become a target for white supremacists and eugenicists during this period, after restrictionists realized a number of victories in late-nineteenth and early-twentieth centuries. Their first big win in Congress had come in 1882, with the passage of the Chinese Exclusion Act, the first piece of immigration legislation prohibiting immigration based on race. This was followed by the implementation of a literacy test in 1917, which was meant to weed out undesirable European immigrants, primarily

from the Southern and Eastern parts of Europe, as well as the creation of an Asiatic barred zone that same year. The Chinese Exclusion Act and Asiatic barred zone of 1917 would reduce Asian immigration to a trickle, and were largely based on narratives of racial threat from those of Asian descent.

Restrictionists did not just want to see limits on Asian immigration though. There was also a desire to see the immigration of undesirable European groups reduced. Southern and Eastern Europeans, such as Italians, Greeks, Serbs, Poles, as well as the Irish, were often portrayed as being of a “whiteness of a different color”, to borrow Matthew Frye Jacobson’s phrase.<sup>1</sup> Groups like the Immigration Restriction League had long pushed for limits on “new” immigrant groups from Europe, who were seen as being of a lower racial stock than immigrants from the “old” countries, primarily Northern and Western Europeans, such as Germans and the English. In 1907 the Dillingham Commission was formed, made up of three members from the House of Representatives, three from the Senate, with another three appointed by then-President Theodore Roosevelt. Its purpose was to examine the impact that new waves of immigrants were having on the United States and it took its name from William Dillingham, a senator from Vermont, who served as chair. Henry Cabot Lodge, a member of the commission, was a known and outspoken eugenicist who believed that a whole range of traits were inherited or carried in the blood, which made the immigration of those from lower racial stocks

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<sup>1</sup>Jacobson, Matthew Frye. Whiteness of a Different Color. Harvard University Press, 1999.

a threat to the nation. Theodore Roosevelt also endorsed the pseudo-science of eugenics, which would become increasing popular in the early 20th century.

In 1911 the Dillingham Commission released its report, which spanned 42 volumes. The commission found that “new” immigrant groups from places like Serbia and Italy posed a burden to the United States across a number of different dimensions, including a greater propensity to criminal behavior, which the commission dedicated an entire volume to. Mexican immigration, which would not begin to surge until 1910 and the beginning of the Mexican Revolution, was largely ignored by the commission, though they did note that Mexican immigrants could become an issue in the future. In volume 36, the commission pointed out that, “Mexican immigrants are providing a fairly acceptable supply of labor...While the Mexicans are not easily assimilated, this is not of very great importance as long as most of them return to their native land after a short time.” This highlights a basic tension that would become the basis for immigration policy throughout the 20th century, the need for Mexican labor and perceived racial threat posed by Mexican permanence in the United States.

After the release of the Dillingham Commission’s report, eugenics would provide the “scientific” evidence needed to grant greater legitimacy and urgency to immigration restriction in the first two decades of the 20th century. In 1910, the Eugenics Records Office, a private research institute for the

study of human heredity, was formed by Charles Davenport. Harry Laughlin was appointed superintendent of the ERO and would emerge as a central figure in the push for immigration restriction in the United States, becoming assistant director under Davenport in 1921. Laughlin would offer expert testimony to Congress on a number of occasions, frequently before the House's Committee on Immigration and Naturalization, which was chaired by Albert Johnson of Washington, one of the key architects of the Johnson-Reed Act and the national origins quota system it would create, and one of Congress' most outspoken supporters of eugenics.

Laughlin offered testimony before the House committee from April 16-17, 1920 titled, "The Biological Aspect of Immigration" where he made a case for the use of immigration restriction to protect the racial purity of the United States. This was needed, because as Laughlin testified, "The character of the nation is determined primarily by its racial qualities; that is, by the hereditary physical, mental, and moral or temperamental traits of its people." At the conclusion of his testimony he was appointed the expert eugenics expert of the committee and a request was made for further studies into immigration and the racial stock of immigrants. The testimony of Laughlin, the Dillingham Commission report, and the influence of eugenicists like Albert Johnson in Congress would lead to the passage of the Johnson-Reed Act in 1924. This represented a significant victory for immigration restrictionists and eugenicists, who had long been advocating for curbs on

Southern and Eastern European immigration. It created a national origins quota system for Europe based on two percent of the population present as of the Census of 1890, which was deliberately chosen to privilege Northern and Western European immigration. Additionally, Johnson-Reed created a system of racial quotas for those outside of Europe, with both Africa and Asia subject to a pan-ethnic regional quota, both of which were less than the quota of many European nations. In the case of Asian immigrants, Johnson-Reed also prohibited the immigration of any who could not naturalize, which Asian immigrants could not, meaning they could not even draw upon the regional quota for the Asia-Pacific region.

While Mexican immigration had largely been ignored in the Dillingham Commission report, it began to receive attention during the debate over the Johnson-Reed Act. Specifically, some members of Congress found it problematic that Mexico would not be subject to a quota under the act. Representative Patrick O'Sullivan of Connecticut argued, "I do not know what standard is used to measure desirability, but I do know the average Italian is much superior to the average Mexican as a full-blooded Airedale is to a mongrel. Yet this bill will permit every Mexican in Mexico to enter the United States, and the same bill would limit the number of Italians to 3,912." In the Senate, Senator Matthew Neely of West Virginia proclaimed, "On the basis of merit Mexico is the last country in the world to which we should grant special favor or extend a peculiar privilege...It is high time for us to realize that this is our

country, and that it is our duty to defend it against all enemies. It is our duty to defend it not only against enemies in arms, but against the millions of physically, mentally, and morally inferior men and women scattered over Europe, Asia, Africa, Mexico, and the islands of the sea, who, as prospective immigrants, are awaiting the opportunity to rush our shore.” Despite the racial animosity displayed toward Mexican immigrants in the debate over Johnson-Reed, Mexico was not included in the quotas. This was due in part to resistance on the part of agribusiness, who wanted to maintain access to Mexican laborers. Rep. John Box of Texas, a long-time opponent of Mexican immigration and proponent of quotas for Mexico, explicitly noted that the inclusion of Mexico in Johnson-Reed’s quotas could potentially lead to the entire bill being killed due to opposition from business interests.<sup>2</sup>

After the passage of Johnson-Reed in 1924, eugenicists and restrictionists like Rep. Box began to push for national quotas to be applied to Mexico. Box would introduce a number of bills to do just this beginning in 1926, despite the continued opposition from agricultural and business interests. Faced with the drive to restrict access to Mexican labor, some groups threatened that, “...if we are deprived of this source of labor we must immediately bring negroes from the southern states or Porto Rico.”<sup>3</sup> Those who wanted Mexican immigration restricted leaned heavily on eugenics in making their argument, with Rep. Robert Green of Florida proclaiming that, “Another reason why

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<sup>2</sup>65th Congressional Record, 6478

<sup>3</sup>U.S. Senate, Hearings before the Committee on Immigration, 1928

the quota should apply to any country south of the Rio Grande is because their population in the main is composed of a mixture of blood of White, Indian, and Negro. This makes this blood a very great penalty upon the society which assimilates it.”<sup>4</sup> Similarly, Box would argue that the purpose of the nation’s immigration laws was to prevent, “...the lowering of the ideals and the average of our citizenship,” before specifically singling out the “Mexican peon” as a threat to the racial purity and cohesion of the nation.<sup>5</sup>

The language used by members of Congress in many ways echoed the Congressional testimony given by Harry Laughlin of the Eugenics Record Office. In 1922 Laughlin once again testified before the House Committee on Immigration and Naturalization in a hearing titled, “Analysis of America’s Melting Pot”. Laughlin presented a number of statistics to the House committee that were meant to demonstrate the threat posed to the racial stock of America by various immigrant groups. While Congress itself was more interested during this time in Southern and Eastern Europeans, Laughlin noted that Mexican immigrants were ranked fourth in all types of social inadequacy, which included criminality, feeble-mindedness, insanity, propensity to disease or illness, and physical disabilities. He noted that these traits were carried in the blood or “germ plasm” and that, “We in this country have been so imbued with the idea of democracy, or the equality of all men, that we have left out of consideration of blood or natural inborn hereditary mental

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<sup>4</sup>69th Congressional Record, 2462

<sup>5</sup>69th Congressional Record, 2818

and moral differences. No man who breeds pedigreed plants and animals can afford to neglect this thing...”<sup>6</sup> Then, in 1928, the year immediately preceding the passage of the Undesirable Aliens Act, Laughlin would once again be called to testify before Congress, this time in a hearing titled, “The Eugenical Aspect of Deportation”. Laughlin pointed out that, “...deportation is the last line of defense against the contamination of American family stocks by alien hereditary degeneracy.”<sup>7</sup> He would later point out that, “Immigration can be made to improve the quality of the American people, but if the present standard is not raised and rigidly enforced, and if the aliens of degenerate or inferior stock who are found within our borders, especially those who will become the parents of future Americans, are not deported, then, depending on the number of such cases, immigration will tend to work not toward the improvement but toward the degeneration of the American people.” Johnson, Box, and Green were all members of the Committee on Immigration and Naturalization at the time of Laughlin’s testimony, with Johnson going so far as to request that Laughlin be made an immigration agent in 1930. Eugenicists, both inside and outside Congress, increasingly saw Mexican immigration as a racial threat to the nation and the language of men like Laughlin would be drawn on heavily in arguing for quotas to be applied to Mexico, and eventually for the criminalization of illegal entry/reentry.

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<sup>6</sup>Analysis of America’s Melting Pot, Hearings before the Committee on Immigration and Naturalization, House of Representatives, 67th Congress

<sup>7</sup>The Eugenical Aspects of Deportation: Hearings Before the Committee on Immigration and Naturalization, House of Representatives, Seventieth Congress

Instead, other approaches would first be tried to limit the number of Mexican nationals entering the United States in the early part of the 20th century. Mexican immigrants were increasingly seen as a problem, as the Mexican Revolution (1910-1914) and Cristero Rebellion (1926-1929) increased immigration to the United States. Scholarly articles on the “Mexican Problem” would jump from 19 between 1910 and 1920, to 51 between 1920 and 1930.<sup>8</sup> For the first two decades of the twentieth century Mexican immigration was unregulated and driven largely by labor demands in the U.S. and conditions in Mexico. Unlike Asian immigrants, Mexican nationals, as a result of their racial categorization under the Treaty of Guadalupe Hidalgo, could naturalize. This right was affirmed by the courts in the *In re Rodriguez* case of 1897. The ability to naturalize this group a distinct threat to the racial integrity of the nation, as they also were not as easily regulated as “undesirable” Europeans or Asians since Mexico shared a land border with the United States.

Still, attempts were made to limit land entry from Mexico. The Border Patrol was formed in 1924 and administrative procedures meant to make legal entry unpleasant were put in place to serve as a deterrent for Mexican immigration. A head tax was imposed on Mexican immigrants in the post-WWI period, and those entering from the southern border were subjected to humiliating and degrading nude inspections and delousing baths, often using caustic chemicals, with their clothes fumigated with zyklon-B to remove po-

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<sup>8</sup>Nevins, Joseph. Operation Gatekeeper and Beyond: The War on “Illegals” and the Remaking of the U.S. - Mexico Boundary, Routledge, 2010

tential parasites. These same procedures, however, were not applied to the northern border, since Canadian immigrants were not seen as racial threats or as potential vectors for disease, which was explicitly linked by eugenicists during this period to race.<sup>9</sup> The push to regulate Mexican immigration, driven by eugenicist fears of the threat this group posed to racial purity in the United States, would culminate in the passage of the *Undesirable Aliens Act* in 1929.

The Border Patrol and the administrative procedures put in place failed to limit Mexican immigration and in 1929 a compromise was struck between restrictionists and the business interests reliant on Mexican labor. Instead of a quota on Mexico, Senator Coleman Livingstone Blease of South Carolina introduced Senate Bill 5094, which would be nicknamed the “Undesirable Aliens Act”. Blease himself was an outspoken White supremacist and someone who had defended lynch mobs as necessary for liberty, and who supported a constitutional amendment prohibiting miscegenation. He was also a staunch restrictionist, stating in 1930, “So far as I am concerned, I believe in keeping the doors shut against all immigration, in keeping them all out...”<sup>10</sup> The debate around the Undesirable Aliens Act would be driven by eugenicist narratives of racial inferiority and threat, something which Rep. John J. O’Connor of NY noted was inherent in the bill itself. He pointed out that, “I fear there is a spirit pervading our country today reflected in these

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<sup>9</sup>Stern, Alexandra Minna. ”Buildings, boundaries, and blood: Medicalization and nation-building on the US-Mexico border, 1910-1930.” Hispanic American Historical Review 79.1 (1999): 41-81.

<sup>10</sup>72 Cong. Rec. 7512-13

immigration bills that is a menace to the country - a spirit of intolerance and bigotry not only to religions but to races.”<sup>11</sup> The report on the Undesirable Aliens Act by the House Committee on Immigration and Naturalization included a letter expressing opposition from the ACLU to the criminalization of undocumented entry, though this was ignored.

Eugenist narratives were common in the debate over the *Undesirable Aliens Act* in the House, led by men like Robert Green and John Box. Green argued that criminals in the United States were largely foreign-born, while Box would go further, unleashing a tirade steeped in eugenics to justify the bill. “They are badly infected with tuberculosis and other diseases; there are many paupers among them; there are many criminals...they are objectionable as immigrants when tried by the tests applied to other aliens.” while Rep. Roy Fitzgerald of Ohio charged that Mexican immigrants were, “poisoning the American citizen.”<sup>12</sup> The Undesirable Aliens Act would be passed with little opposition in either house of Congress and became law on March 4th, 1929, representing the first codification of what would become USC 1326. The *Undesirable Aliens Act* criminalized undocumented entry (1325) and reentry (1326) for the first time, making the former a misdemeanor and the latter a felony.

While the law technically applied to undocumented entry from the north-

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<sup>11</sup>70th Congressional Record, 3526

<sup>12</sup>70th Congressional Record, 3620

ern OR southern borders, there was little mention of the Canadian border during the debate over the *Undesirable Aliens Act*. Indeed, even groups like the Immigration Restriction League had noted that because Canadians were of similar racial stock, no quotas were necessary.<sup>13</sup> The omission of any real discussion of illegal entry from Canada from debate on the Undesirable Aliens Act made the racial animus behind the law clear, as would the later loopholes that would be created for illegal entrants from Canada.

Nineteen twenty-nine would also mark the beginning of a program of Mexican repatriation that would last seven years until 1936. Mexican reparation was a combination of federal, state, and local programs meant to encourage Mexicans in the United States to “voluntarily” return to Mexico. Mexican nationals were threatened with forcible deportation and raids were announced in advance, with arrests highly publicized to increase fear in Mexican communities. In the El Monte area of Los Angeles, approximately 300 people, largely if not exclusively members of Latinx communities, were questioned and asked to provide proof of legal entry.<sup>14</sup> As with the Undesirable Aliens Act, Mexican repatriation was exclusively focused on Mexicans, legal and illegal, citizen and immigrant, and would result in an estimated two million Mexicans being “repatriated”. Not all of those who were returned to Mexico were immigrants though, and in 2005 California passed the “Apology Act

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<sup>13</sup>Ngai, Mae M. Impossible Subjects: Illegal Aliens and the Making of Modern America. Princeton University Press, 2014.

<sup>14</sup>Hoffman, Abraham. “Stimulus to repatriation: The 1931 federal deportation drive and the Los Angeles Mexican community.” Pacific Historical Review 42.2 (1973): 205-219.

for the 1930s Mexican Repatriation Act” which formally acknowledged that, “These raids targeted persons of Mexican ancestry, with authorities and others indiscriminately characterizing these persons as ‘illegal aliens’ even when they were United States citizens or permanent legal residents.” Furthermore, of those who were forced to return to Mexico, the Apology Act estimates that 60% were American citizens. This was likely deliberate, as one of the problems with immigrants from “undesirable” races was their ability to have children who would become American citizens by virtue of the Fourteenth Amendment, with eugenicists like C.M. Goethe, a California businessman who corresponded with Harry Laughlin, noting in 1933 that, “It is this high birthrate that makes Mexican peon immigration such a menace. Peons multiply like rabbits...”. While there was a continued push for quotas on Mexican immigration, continued resistance from business-interests made this impossible to achieve, especially in the face of renewed demands for Mexican labor as the country emerged from the Great Depression.

In 1942 a new chapter would open in the relationship between the United States and laborers from Mexico in the form of an agreement between the two countries, the bracero program. This set up a process for bringing Mexican labor into the United States, which many industries were even more dependent on after the U.S. entered WWII in Dec. of 1941. Under the bracero program, applicants would pay a fee, go through inspection, and then be contracted to an employer who was supposed to provided a guaranteed wage, housing, and

funds for meals and general subsistence. Braceros could work for a period of six months after which they had to return to Mexico, unless their visa was renewed. This was meant to supply a stream of cheap, disposable labor for American companies and, importantly, ensure these laborers would return to Mexico. While there were supposed to be some minimum guarantees for braceros in terms of wages and living accommodations, Mexico was a junior partner in the agreement, in 1954 dropping its ability to unilaterally blacklist employers who were in violation of the terms of the bracero contract. In 1956, only 50 of more than 1500 employers who were in violation of the terms of the program were removed.<sup>15</sup> Yet the bracero program also helped to exacerbate undocumented entry, as there was both more demand than there were available spots, as well as a far larger number of immigrants who wanted to enter the US to work. Some employers also preferred undocumented labor, as it was easier to access, especially for those in border regions, involved less red tape, and was often cheaper since the employer did not have to guarantee a wage or minimum standards for accommodations.

In the 1940s and 1950s, as the explicit eugenics of the 1920s and 1930s became less socially acceptable, the language around Mexican immigrants shifted, with braceros largely portrayed as a non-threatening disposable labor force, while undocumented immigrants were labeled “wetbacks” for their method of entry across the Rio Grande river. Mexican labor was always

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<sup>15</sup>Ngai, 2004

seen as invaluable and nonthreatening as long as there were guarantees that those individuals would return to Mexico when their labor was no longer needed. The “wetback” on the other hand, was not guaranteed to return and was seen as a threat to the racial purity of the country. While the eugenicist language of the Johnson-Reed or Undesirable Aliens Acts was no longer present to the same extent, the same attributions used to characterize Mexican immigrants in earlier decades were now attached to the figure of the “wetback”. This allowed for charges of racism to be circumvented, while still using the same racialized traits to describe a population that had entered without inspection. One study divided the “wetback” into two groups, one a set of docile agricultural workers who accepted, “...good or bad treatment, starvation wages, diarrhea and other sickness for his children...and unsanitary living conditions,” while a second group, the “pachucos” were criminals, drug dealers, smugglers, prostitutes, and homosexuals.<sup>16</sup> These attributions of criminality, illness, and deviant behavior were based on race, not legal status, with a 1951 study of Mexican immigrants noting that, “...no careful distinctions are made between illegal aliens and local citizens of Mexican descent. They are lumped together as Mexicans and the characteristics that are observed among the wetbacks are by extension assigned to the local people.”<sup>17</sup>

In 1952, just three months before the passage of the McCarran-Walter

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<sup>16</sup>Idar, Ed and Andrew C. McLellan. What Price Wetbacks. Austin, Texas State Federation of Labor (AFL) (1953).

<sup>17</sup>Saunders, Lyle and Olen Leonard. The Wetback in the Lower Rio Grande Valley of Texas. University of Texas - Austin (1951).

Act, Senate bill 1851 was introduced and nicknamed the “Wetback Bill”. This was anti-harboring legislation that attached criminal penalties to the sheltering or transport of undocumented immigrants, but in the Congressional debate over the bill, the continued animus toward Mexican immigrants, as well as the racial attributions attached to the figure of the Mexican immigrant were made clear. As with past legislation, the Wetback Bill primarily targeted those from the southern border, and initially applied exclusively to Mexican immigrants, before some in Congress questioned whether this raised issues of constitutionality. Senator George Aiken of Vermont questioning whether Congress could, “discriminate constitutionally against the aliens of one particular nation,” before noting that while it should apply to all illegal entrants, he knew, “...of no instances of illegal employment of Canadians.”<sup>18</sup> During debate, Senator Harley Kilgore of WV used language to describe the “wetback” population that largely mirrored earlier eugenicist reflections on the criminality of Mexican immigrants. He argued that, “Practically every State in the Union has the wetback problem. Some of these people cannot meet the standards of immigration. They may be criminals.”<sup>19</sup>

The argument of eugenicists and members of Congress that Mexican immigrants had a greater propensity for criminal behavior had long served as a justification for restriction and example of the threat this group posed, despite the fact that this had been refuted by a report from the National

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<sup>18</sup>98th Congressional Record, 799

<sup>19</sup>98th Congressional Record, 793

Commission on Law Observance and Enforcement, also known as the Wickersham Commission, in 1931. The commission had been formed in 1929 by President Herbert Hoover because of growing concerns about crime in the United States, but unlike the Dillingham Commission was not made up of members of Congress but a number of experts from various fields such as law, criminology, and the social sciences. Because of the longstanding attribution of criminality to the foreign-born, the Wickersham Commission dedicated an entire volume of their report to immigration and crime. Mexican immigration was specifically examined, with the Wickersham Commission finding no support that Mexican immigrants were more inclined to criminality. The commission noted that higher incarceration rates in some areas among the Mexican immigrant population were often due in part to ignorance of Prohibition laws. The report also pointed out that racial profiling occurred, likely exaggerating rates of criminal behavior because, “It was frequently observed that peace officers shared the prejudices toward Mexicans of other members of the community in which they live... The effect of this is to doubtless increase arrests of Mexicans relative to arrests of native-born Americans, quite independent of criminality.”<sup>20</sup> While the figure of the “wetback” was characterized as a threat to the country, employers, as with past legislation, were provided a carve out in S.B. 1851, as employment would not constitute harboring.

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<sup>20</sup>National Commission on Law Observance and Enforcement, Report on Crime and the Foreign-born, Government Printing Office (1931)

The passage of McCarran-Walter Act on June 27, 1952, which reenacted USC 1326, represented a reform of existing immigration laws in some ways, but also maintained much of the racial animus present in the earlier Johnson-Reed Act. The national origins quotas of Johnson-Reed were increasingly seen as problematic in the wake of WWII and the Holocaust, as well as counter to US interests as the Cold War began. While the McCarran-Walter Act did remove racial prohibitions on naturalization and immigration, it did little to change the racial quotas of Johnson-Reed. The Asia-Pacific region still received only a small number of quota spots when compared to European nations, and McCarran-Walter also required those of Asian ancestry, regardless of citizenship, to draw on the regional quota. During the debate some even lamented the end of eugenics as a result of the horrors of Nazi Germany, with Rep. John Wood of Idaho noting that, “It seems to me the question of racial-origins, though I am not a follower of Hitler, there is something to it. We cannot tie a stone around its neck and drop it into the middle of the Atlantic just because it worked to the contrary in Germany. The fact still remains that the peoples of Western Europe have made good American citizens...I believe that possibly statistics would show that the Western European races have made the best citizens in America.”<sup>21</sup>

Truman would veto the legislation because of its discriminatory aspects, in his letter to Congress stating that while he approved of the removal of

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<sup>21</sup>98th Congressional Record, 4314

racial restrictions on naturalization and immigration, “... now this most desirable provision comes before me embedded in a mass of legislation which would perpetuate injustices of long standing against many other nations of the world, hamper the efforts we are making to rally the men of East and West alike to the cause of freedom, and intensify the repressive and inhumane aspects of our immigration procedures. The price is too high, and in good conscience I cannot agree to pay it.”<sup>22</sup> While the bill would pass over the veto of the president, the racially discriminatory nature of immigration quotas in both 1924 and 1952 was at least discussed.

This was not the case with USC 1326, which was reenacted with no debate or discussion of the racial animus underlying its initial codification in 1929. This animus was still on display though, with the regular references during the 98th Congress to “wetbacks” and continued attribution of racialized traits to Mexican immigrants, though now this cloaked by referencing their legal status. The only real reference to 1326 in the debate around McCarran-Walter’s reenactment was in the form of a letter from Attorney General Peyton Ford, who wanted the term “found in” to be added to make prosecutions easier since the original codification suggested that the reentry point needed to be established in order to determine the proper venue for prosecutions. This letter included a reference to the “wetback”, a term Pat McCarran himself used in discussing Mexican immigrants and the potential

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<sup>22</sup>Truman, Harry. Veto of Bill to Revise the Laws Relating to Immigration, Nationalization, and Nationality. June 25th, 1952

inclusion of provisions the Wetback Bill in the new omnibus legislation. He noted that, “We changed the language a little to meet the wetback situation, which applies to the southern section of the country.”<sup>23</sup> Pat McCarran himself was a known racist and anti-Semite, and in 2020 members of Congress from Nevada sent a letter to the state legislature and governor asking that Las Vega’s airport, McCarran International, be renamed and that the former senator’s statue be removed from the National Statuary Hall in DC. Clark County, the site of McCarran International, agreed in 2021 to change the name of the airport to Harry Reid International.<sup>24</sup>

The continuing racial animus toward Mexican immigrants was also demonstrated by the policy of pre-examination that was applied to the northern border and based on an agreement with the Canadian government. In 1935, those who had entered the United States illegally could apply for “pre-examination” while in the United States. Initially meant for those for whom deportation would cause a hardship, such as undocumented entrants with an American spouse or children, individuals would apply and be cleared for legal entry while in the US, then have to voluntarily depart to Canada, where they then could be issued a visa at the nearest American consul.<sup>25</sup> Immigrants from Mexico were explicitly excluded from this program in 1945 and even prior to

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<sup>23</sup>98th Congressional Record, 5320

<sup>24</sup><https://www.reviewjournal.com/news/politics-and-government/clark-county/clark-county-backs-mccarran-name-change-to-harry-reid-international-airport-2281859/>

<sup>25</sup>Ngai, Mae M. Impossible Subjects: Illegal Aliens and the Making of Modern America. Princeton University Press, 2014.

this it was never applied equally. As it was an agreement between the US and Canadian governments, even if Mexican immigrants were allowed to apply, they would still have to travel to Canada in order to normalize their status. Thus, deportation and the penalties for undocumented entry/reentry were never just about how an immigrant entered the United States, but also their race. In the case of those who had entered the US illegally from Canada, largely European or of European descent, a path was provided to normalize their status. Between 1935 and 1959, approximately 58,000 pre-examination requests were made and most were also granted<sup>26</sup>, with more than 4000 immigrants allowed to normalize their status in both 1943 and 1944<sup>27</sup>, the years preceding the exclusion of Mexican nationals. On the other hand, between 1929 and 1939 approximately 44,000 Mexican immigrants were charged under the *Undesirable Aliens Act* for illegal entry.<sup>28</sup> Thus, while some undocumented immigrants from Canada were provided a means of relief and path to normalizing their status, this was not extended to those from the southern border, primarily Mexican immigrants.

Immigrants entering the United States without a visa from Canada were also discussed in far different terms than their Mexican counterparts, despite their violation being the same. During a discussion of pre-examination in 1938, Rep. Louis Rabaut of Michigan defended pre-examination, arguing

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<sup>26</sup>Ngai, 2004

<sup>27</sup>Congressional Record, March 14th, 1945, 2222

<sup>28</sup>Hernández, Kelly Lytle. *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965*. UNC Press Books, 2017.

that without it families would be separated and that have a “...little humanity about us.” During the same debate, Rep. Emanuel Cellar asked, “...what will happen to the children,” if their parent was deported because of the their legal status<sup>29</sup>.” The courtesy of these kind of considerations was not extended to non-White immigrants, who were regularly deported, and charged under 1326, despite the lives they built in the United States or the toll this took on their families.

It was also acknowledged that this procedure allowed for the skirting of the criminal penalties that had been attached to undocumented entry. During a debate on pre-examination in 1938, Rep. Malcolm Tarver of Georgia noted that, “I am saying simply that the Labor Department ought to observe the law, and that if the law should be changed in order to take care of any proportion of these aliens on this list, who ought not to be deported notwithstanding they are lawfully subject to deportation, then that is a question which should present itself to this House and the Senate...Why? Because section 137 (h) of title VIII, United States Code, provides that where an alien who has obtained unlawful entry to this country is deported that alien not only cannot return, but if he returns he is subject to imprisonment in the United States penitentiary for not exceeding 5 years. So if the Department of Labor carries out the law and deports aliens unlawfully here, aliens who are subject to deportation, not only cannot obtain legal readmission but if they

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<sup>29</sup>Congressional Record, Feb. 17th, 1938, 2181-2182

do reenter the country without lawful authority they will be violating the law and subject to imprisonment in the penitentiary.<sup>30</sup>” Thus, it was clear that the policy of pre-examination was in conflict with the criminalization of illegal reentry, with Senator Robert Reynolds in 1940 characterizing it as, “an inducement to aliens to enter illegally in the hope of availing themselves of this nullification pie,” and both Tarver and Reynolds would charge that many of those admitted under pre-examination had committed crimes that should have made them ineligible for entry.<sup>31</sup>”

By the 1950s it was also acknowledged that there was a growing problem on the northern border with undocumented entrants from Canada. In 1951, Rep. Emanuel Cellar of New York, pointed out that there was a “distressing” number of illegal immigrants entering through the northern border<sup>32</sup> and in 1953, Senator Herbert Lehman cited INS Commissioner Benjamin Habberton as stating there was little screening of European immigrants in Canada, and that “border-jumping” was on the upswing.<sup>33</sup> Despite this, pre-examination remained in place. The reenactment of USC 1326 in the McCarran-Walter Act, when paired with the loophole for the northern border, demonstrates that the criminal penalties attached to reentry were meant to specifically penalize Mexican, or Latin American, undocumented immigrants, whose hardships were never taken into consideration in the same way as their white

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<sup>30</sup>Congressional Record, Feb. 18th, 1938 2176

<sup>31</sup>Congressional Record, July 8th, 1940, 9275

<sup>32</sup>Congressional Record, June 26th, 1951, 7155

<sup>33</sup>Congressional Record, March 3rd, 1954 2562

counterparts who entered surreptitiously from Canada.

While USC 1326 received scant attention during the debate over the McCarran-Walter Act, the repeated use of the term “wetback” to describe Mexican immigrants and the racialized aspect of this designation demonstrate that racial animus toward Mexicans continued to be present during its reenactment. The historical record clearly demonstrates that Mexican nationals, as well as those from Central America, were the regular targets of racially-motivated legislation. USC 1326 was never intended as racially-neutral policy, but was instead about controlling immigration from one border, and by one group of people, in particular. Entrants from the northern border were, through pre-examination, differentiated from those from the southern border. Members of Congress, and even restrictionist groups like the Immigration Restriction League, made it clear that undocumented entry from the north was not seen as a problem because those immigrants were like “us”. They were white and thus they could be assimilated, while those crossing the southern border were criminalized and characterized as “wetbacks”. USC 1326 has never been subject to a debate of its origins and the racial animus present in either its initial enactment in ’29 or reenactment in ’52, nor its actual merit as a policy. Despite its long history, it has never been shown to be an effective deterrent to illegal entry or reentry, and the Annual Report of the Secretary of Labor for 1933 admitted as much, stating “The act of March 4, 1929, prescribing penalties for illegal entries of aliens does not seem to

have the deterrent effect expected.”<sup>34</sup> While 1326 seems unlikely to serve as deterrent to undocumented reentry, it has destroyed innumerable lives over this period. Congress and President Truman chose to address the racially-motivated aspects of national origins quotas, particularly the racial quota for the Asia-Pacific region, in 1952 even if these were ultimately preserved, but did not extend the same courtesy to Mexican or Central American immigrants who continue to make up the largest percentage of sentenced federal offenders for immigration violations, demonstrating the continued, and deliberate, disparate impact of the nation’s immigration laws.

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<sup>34</sup>Secretary of Labor, Twenty-First Annual Report of the Secretary of Labor, 1933